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STATUTORY INSTRUMENTS

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**1997 No. 171**

**The Courts-Martial (Royal Air Force) Rules 1997**

**PART II**

**PROSECUTION OF OFFENCES**

**Referring a case to the prosecuting authority**

**4.** If the higher authority refers a case in respect of an accused to the prosecuting authority, in accordance with section 76A(I) of the Act he shall forward to the prosecuting authority—

- (a) a copy of any report concerning the case prepared by the Royal Air Force Police or other investigator;
- (b) any allegation reported to the commanding officer of the accused in the form of a charge under section 76(1) of the Act and details of any substitution or amendment of that charge under section 76(3) of the Act;
- (c) a list of any potential witnesses;
- (d) any written statements or written record of evidence of the potential witnesses;
- (e) any statements made by the accused including records or transcripts of interviews conducted under caution;
- (f) a list of any exhibits;
- (g) a copy of any conduct sheets of the accused;
- (h) any other information in the possession of the higher authority which may be material to the prosecutor's consideration of the institution of proceedings.

**Formal preliminary examination**

**5.—(1)** Where a case in respect of an accused has been forwarded to the prosecuting authority but he has not preferred any charge, the prosecutor may order an examination under this rule and such an examination shall in these Rules be referred to as a formal preliminary examination.

(2) The order for a formal preliminary examination shall—

- (a) appoint the date, time and place at which the formal preliminary examination shall take place;
- (b) state the nature of the allegations against the accused;
- (c) list the witnesses whom the prosecutor seeks to examine orally; and
- (d) list the witnesses whose written statements or other record of evidence are to be read out.

(3) The order shall be served on the accused and the court administration officer not less than 24 hours before the time appointed for the formal preliminary examination.

(4) On receipt of the order, the court administration officer—

- (a) shall summon to attend the formal preliminary examination—

- (i) the witnesses listed in the order whom the prosecutor requires to examine orally; and
  - (ii) such additional witnesses as the accused may request;
- (b) may arrange for the attendance at the formal preliminary examination of a court recorder and interpreter.

### **Conduct of formal preliminary examination**

6.—(1) A formal preliminary examination shall be conducted by an officer of the legal branch of the regular air force (“the conducting officer”).

(2) Subject to paragraph (4) below, each witness whom the prosecutor seeks to examine orally shall be examined by the conducting officer, after which the accused shall be entitled to cross-examine the witness.

(3) A signed written statement or other record of the evidence of each witness listed under rule 5(2)(d) above shall be read out by the conducting officer, unless the accused consents to their inclusion in the record of the examination without being read out.

(4) If—

- (a) the case being investigated concerns behaviour of a violent, cruel or sexual nature; and
- (b) the relevant witness is a person under the age of 17,

then—

- (i) the conducting officer may read out any written statement made by or taken from the witness which would be admissible if given orally; and
- (ii) the accused may not cross-examine the witness in person.

(5) During the formal preliminary examination the conducting officer may summon any witness to attend the examination and give oral evidence.

(6) After paragraphs (2) and (3) above have been complied with, the conducting officer shall explain to the accused—

- (a) that he may give evidence if he so wishes but he is not obliged to do so;
- (b) the consequences of choosing to remain silent; and
- (c) that he may call witnesses on his behalf.

(7) Any witness for the accused (including the accused himself) may give evidence orally but shall not be subject to cross-examination, except that the conducting officer may ask a question where it is necessary to resolve an ambiguity or to enable the evidence to be recorded in a coherent form.

(8) Except where the witness is a person under the age of 14, any evidence given orally during the formal preliminary examination shall be given on oath, administered by the conducting officer.

(9) Any evidence given orally during the formal preliminary examination shall be recorded by the conducting officer or a court recorder.

(10) Where the evidence is recorded in writing, the record of his evidence shall be read back to the witness at the conclusion of his evidence, corrected where necessary and signed by him.

(11) A copy of any statement read out in accordance with paragraph (3) or (4) above and the transcript of any shorthand note or mechanical record shall be included in the record of the examination.

(12) After the conclusion of the formal preliminary examination, the conducting officer shall deliver the record of the examination to the prosecuting authority.

### **Charge sheet**

- 7.—(1) A charge sheet shall state—
- (a) the name, service number and rank of the accused;
  - (b) the name of the unit, if any, in which the accused is serving;
  - (c) particulars of how the accused is subject to air force law or otherwise triable under the Act;
  - (d) any charge preferred against the accused; and
  - (e) whether any charge preferred against the accused is to be tried by general court-martial or district court-martial.
- (2) A charge sheet shall be signed and dated by the prosecutor.

### **Charges and joinder**

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

### **Notifying the accused's commanding officer**

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

- (2) In these Rules, “the prosecution papers” means—
- (a) a copy of the charge sheet;
  - (b) a list of any witnesses whom the prosecutor proposes to call;
  - (c) copies of any statements of the prosecution witnesses, or other record of their evidence;
  - (d) a list of any exhibits which the prosecutor proposes to put in evidence and copies of those exhibits or details of their whereabouts;
  - (e) a copy of any conduct sheets of the accused; and
  - (f) a list of all unused material.

### **Notifying the court administration officer**

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

(2) On receipt of a copy of the prosecution papers from the prosecutor, the court administration officer shall send a copy of the prosecution papers to the Judge Advocate General (or his deputy).

### **Notification of trial**

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

(2) As soon as is practicable after receipt of the prosecution papers, the commanding officer shall notify the accused that he is to be tried by court-martial.

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

- (a) the prosecution papers;

- (b) where so required by the prosecutor, a statement explaining the effect of section 11 of the Criminal Justice Act 1967(1) (notice of alibi) and a form for the accused's notice of alibi;
- (c) a form for notifying the court administration officer of the accused's legal adviser; and
- (d) a form for acknowledgement of receipt.

### **Discontinuing proceedings before trial**

**12.** If before the commencement of the trial of a charge the prosecutor discontinues proceedings on that charge, he shall serve notice in writing on the accused and the court administration officer.

### **Description of the court-martial**

**13.** If before the commencement of the trial of a charge the prosecutor determines that any charge should be tried by a court-martial of a different description from that contained in the initial charge sheet, he shall serve notice in writing on the accused and the court administration officer.

### **Amending charges and additional charges before trial**

**14.—(1)** If before the commencement of the trial of a charge the prosecutor—

- (a) amends, or substitutes another charge or charges for, that charge;
- (b) prefers an additional charge against the accused and directs that the additional charge shall be tried at the same court-martial trial as the original charge,

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

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

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

- (a) a copy of the amended charge sheet;
- (b) any papers which are required to be added to the prosecution papers as a result of amending the charge sheet; and
- (c) where in the opinion of the prosecutor it is necessary, a statement explaining the effect of section 11 of the Criminal Justice Act 1967 and a form for the accused's notice of alibi.

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

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

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

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(1) 1967 c. 89; section 11 applies to proceedings before courts-martial by virtue of section 12 of the Criminal Justice Act 1967, subject to the modifications prescribed by the Criminal Justice Act 1967 (Application to Courts-Martial) (Evidence) Regulations 1997 (S.I.1997/173).