
STATUTORY INSTRUMENTS

2007 No. 3442

The Courts-Martial (Army) Rules 2007

PART 2

PROSECUTION OF OFFENCES

Referring a case to the prosecuting authority

4.—(1) Where the higher authority refers a case in accordance with section 76A(1) of the Act, he shall forward to the prosecuting authority—

- (a) all documents and any other materials forwarded to him by the commanding officer in accordance with regulations made by the Defence Council under section 83 of the Act;
- (b) any other information in his possession which may be material to the prosecuting authority's consideration of the institution of proceedings; and
- (c) where the accused has elected trial by court-martial, notification of that fact.

Withdrawal of election in a multiple charge case

5.—(1) Where—

- (a) an election for court-martial trial relates to two or more preliminary charges; and
- (b) that election is withdrawn with the leave of the prosecuting authority,

section 83B(2) of the Act shall have effect as if it required the prosecuting authority to refer back to the appropriate superior authority or, as the case may be, the commanding officer of the accused, each of the preliminary charges to be dealt with summarily.

Formal preliminary examination

6.—(1) Where a case in respect of an accused has been forwarded to the prosecuting authority but he has not preferred any charge, he 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 prosecuting authority 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 notify to attend the formal preliminary examination—

- (i) the witnesses listed in the order whom the prosecuting authority 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

7.—(1) Subject to paragraph (3), each witness whom the prosecuting authority seeks to examine orally shall be examined by him, after which the accused shall be entitled to cross-examine the witness.

(2) A signed written statement or other record of the evidence of each witness listed under rule 6(2)(d) shall be read out by the prosecuting authority, unless the accused consents to their inclusion in the record of the examination without being read out.

(3) If the case being investigated concerns behaviour of a violent, cruel or sexual nature and the relevant witness is a person under the age of 17, then—

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

(4) During the formal preliminary examination the prosecuting authority may notify any witness to attend the examination and give oral evidence.

(5) After paragraphs (1) and (2) have been complied with, the prosecuting authority shall explain to the accused—

- (a) that he may give evidence if he so wishes, but he is not obliged to do so;
- (b) that he may call witnesses on his behalf.

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

(7) 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 prosecuting authority.

(8) Any evidence given orally during the formal preliminary examination shall be recorded by the prosecuting authority or a court recorder.

(9) 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.

(10) A copy of any statement read out in accordance with paragraph (2) or (3) and the transcript of any shorthand note or mechanical record shall be included in the record of the examination.

Referring back in a multiple charge case before charges are preferred

8.—(1) Where—

- (a) an election for court-martial trial relates to two or more preliminary charges; and
- (b) the prosecuting authority considers that a charge or charges different from or additional to a preliminary charge should be preferred,

section 83BB(1) of the Act shall have effect as if it required the prosecuting authority to refer back to the commanding officer of the accused any additional preliminary charge as well as the charge or charges which he would otherwise be required to refer back under that section.

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

Charge sheet

- 9.—(1) A charge sheet shall be in the form specified in Schedule 1 and shall state—
- (a) the name, service number and rank or rate of the accused;
 - (b) the name of the unit, if any, in which the accused is serving;
 - (c) particulars of how the accused is subject to military 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 prosecuting authority.

Charges and joinder

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

Notifying the accused's commanding officer

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

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

Notifying the court administration officer

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

(2) On receipt of a copy of the prosecution papers from the prosecuting authority, the court administration officer shall send a copy of the prosecution papers to the Judge Advocate General.

Notification of proceedings

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

(2) As soon as is practicable after receipt of 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), the commanding officer shall serve the accused with—

- (a) the prosecution papers;
- (b) a form for notifying the court administration officer of the accused's legal representative;
- (c) 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;
- (d) a form for acknowledgement of receipt of the documents listed at (a) to (c).

Discontinuing proceedings before arraignment

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

Description of the court-martial

15. If before the arraignment of the accused on a charge the prosecuting authority 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.

Referring back in a multiple charge case after charges already preferred

16.—(1) Where—

- (a) an election for court-martial trial relates to two or more preliminary charges; and
- (b) the prosecuting authority considers that a charge which has already been preferred (“the original charge”) should be amended, or that a charge should be preferred in addition to or in substitution for the original charge,

section 83BB(1) of the Act shall have effect as if it required the prosecuting authority to refer back to the commanding officer any charge (other than the original charge) which has already been preferred, as well as the charge or charges which he would otherwise be required to refer back under that section.

Amending charges and additional charges before arraignment

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

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

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

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

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

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

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

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

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

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

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

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