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STATUTORY INSTRUMENTS

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**2007 No. 3443**

**The Courts-Martial (Royal Navy) Rules 2007**

**PART 10**

**PROCEEDINGS AT TRIAL**

**Commencement of the trial**

**57.**—(1) For the purposes of these Rules the trial of an accused commences immediately after the last court member has been sworn.

(2) If after the commencement of the trial the judge advocate allows any challenge, objection, plea or application such that there is no charge remaining for the accused to answer, he shall dissolve the court.

**Judge advocate sitting alone**

**58.**—(1) Where—

- (a) any question arises as to the admissibility of evidence;
- (b) an application is made for evidence to be given by a witness through a live television under rule 64;
- (c) the accused makes a submission of no case to answer under rule 66;
- (d) a witness is under examination and a question arises as to the admissibility of a question; or
- (e) for any reason the judge advocate is of the opinion that he should rule on any other question of law, practice or procedure in the absence of the other members of the court,

the judge advocate may direct the other members of the court to withdraw.

(2) The jurisdiction of the court to make an order—

- (a) as to the payment of costs incurred by a party to the proceedings as a result of an unnecessary or improper act or omission by or on behalf of another party to the proceedings; or
- (b) disallowing or ordering the legal or other representative as defined in section 27(3) of the Armed Forces Act 2001<sup>(1)</sup> to meet the whole or any part of any wasted costs as there defined,

may be exercised by the judge advocate sitting alone and he may direct the other members of the court to withdraw for the purpose of exercising the jurisdiction.

(3) If, while the judge advocate is sitting alone in accordance with these Rules, a person commits an offence under section 38(1) of the Act, the judge advocate may report the occurrence to—

- (a) the president of the board; or

- (b) if the offence is committed during a preliminary hearing and the person is subject to the Act, the commanding officer of that person.

### **Opening address**

**59.** Before calling the witnesses for the prosecution, the prosecuting authority may make an opening address.

### **Additional evidence during trial**

**60.**—(1) If after the commencement of the trial the prosecuting authority intends to adduce evidence additional to that referred to in the prosecution papers, he shall where practicable serve notice in writing of such intention together with the particulars of the additional evidence on the accused and the judge advocate before it is adduced.

(2) Where notice and particulars are served on him in accordance with paragraph (1), or where evidence is adduced without such notice being given, the accused may apply to the judge advocate for an adjournment of the trial.

### **Expert evidence**

**61.**—(1) Expert evidence shall not be adduced at a trial without the leave of the judge advocate unless the party proposing to rely on it has served on every other party and the court administration officer, not less than 14 days before the date appointed for the trial, a statement of the substance of the expert evidence.

(2) The statement referred to in paragraph (1) shall be in writing unless every other party consents to it being made orally.

### **Exhibits**

**62.**—(1) Any exhibit admitted in evidence shall be marked sequentially with either a number or a letter.

(2) Each exhibit or a label attached to each exhibit shall be signed by the judge advocate or a person acting on his behalf.

(3) Each exhibit shall be retained with the record of proceedings, unless in the opinion of the judge advocate having regard to the nature of the exhibit or for other good reason it is not expedient to retain the exhibit with the record.

(4) Where an exhibit is not retained with the record of proceedings, the judge advocate shall ensure that proper steps are taken for its safe custody or proper disposal.

### **Presence of witnesses**

**63.**—(1) Except for the accused and any expert or character witness, a witness as to fact shall not, except by leave of the judge advocate, be in court while not under examination.

(2) If while a witness is under examination a question arises as to the admissibility of a question or otherwise with regard to the evidence, the judge advocate may direct the witness to withdraw until the question is determined.

(3) The judge advocate may direct any expert or character witness present in court to withdraw if the judge advocate considers in the interests of justice that his presence is undesirable.

### **Evidence through live television**

**64.**—(1) Any application by the prosecuting authority or an accused for leave under section 32 of the Criminal Justice Act 1988(2) for evidence to be given by a witness through a live television shall be made as soon as is practicable before the commencement of the trial.

(2) An application may not be made under paragraph (1) without the leave of the judge advocate unless not less than 28 days before the date appointed for the trial the party making the application has served a notice in the form set out in Schedule 2 to these Rules on every other party, the court administration officer and the judge advocate stating—

- (a) the grounds of the application;
- (b) the name of the witness;
- (c) where the witness is under the age of 18 years, the date of birth of the witness;
- (d) the country and place where it is proposed the witness will be when giving evidence; and
- (e) the name, occupation and relationship to the witness of any person proposed to accompany the witness and the grounds for believing that person should accompany the witness.

(3) Where the judge advocate gives leave for a witness under the age of 14 to give evidence through a live television, the witness shall be accompanied by a person acceptable to the judge advocate and, unless the judge advocate otherwise directs, by no other person.

### **Examination of witnesses**

**65.**—(1) The judge advocate may allow a request that the cross-examination or re-examination of a witness be postponed if he is satisfied that there is a good reason for such a request and that there is no injustice to the accused in doing so.

(2) The judge advocate may question any witness and, if he considers it appropriate, may put to the witness a question from any other member of the court.

(3) If in the opinion of the judge advocate it is in the interests of justice to do so, the court may at any time—

- (a) call any witness whom it has not already heard;
- (b) recall a witness;
- (c) permit the accused or the prosecuting authority to recall a witness.

### **Submission of no case to answer**

**66.**—(1) At the close of the case for the prosecution the accused may submit, in respect of any charge, that the prosecution has failed to establish a case for him to answer.

(2) If the submission is allowed, the judge advocate shall direct the court to find the accused not guilty of the charge to which the submission relates.

(3) If the submission is not allowed, the court shall proceed with the trial.

### **Finding of not guilty before conclusion of the defence**

**67.**—(1) The court may at any time after the close of the case for the prosecution find the accused not guilty of a charge, provided that the prosecuting authority has been given an opportunity to address the court on such a finding.

(2) The power under paragraph (1) may only be exercised at the invitation of the judge advocate.

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(2) 1988 c. 33; section 32(1)(a) and (3) apply to proceedings before courts-martial by virtue of the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 2006 (S.I. 2006/2890) subject to modifications specified therein.

### **The case for the defence**

**68.**—(1) After the close of the case for the prosecution, the judge advocate shall satisfy himself that the accused understands—

- (a) that he may give evidence in his defence if he so wishes but he is not obliged to do so;
- (b) the consequences of choosing to remain silent at trial;
- (c) that, if he chooses to give evidence, he will be liable to be cross-examined by the prosecuting authority and questioned by the judge advocate; and
- (d) that he may call witnesses on his behalf.

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

### **Witnesses for the defence**

**69.** Except with the leave of the judge advocate, if the accused elects to give evidence he shall be called before any other witness for the defence.

### **Further evidence**

**70.** With the leave of the judge advocate the prosecuting authority may call or recall a witness to give evidence on any matter raised by the accused in his defence which the prosecuting authority could not—

- (a) properly have dealt with before the accused disclosed his defence; or
- (b) reasonably have foreseen.

### **Closing addresses**

**71.**—(1) Subject to paragraph (4), the prosecuting authority 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 prosecuting authority.

(3) Where two or more accused are represented by the same legal representative, he may make only one closing address.

(4) Except with the leave of the judge advocate, if the accused is not represented and has called in person no witnesses other than himself the prosecuting authority shall not make a closing address.

### **Summing up**

**72.** After the closing addresses, if any, the judge advocate shall direct the court upon the law relating to the case and summarise the evidence.

### **Deliberation on finding**

**73.**—(1) After the summing up, the judge advocate shall direct the board to withdraw to deliberate on its finding on each charge before it.

(2) If the court requires further direction on the law during its deliberation on a finding on any charge, it shall suspend its deliberation to seek and be given further direction by the judge advocate in open court.

(3) During its deliberation on a finding, the court shall not separate until the finding has been reached unless the judge advocate directs that in the interests of justice the court may separate.

(4) The vote of each member of the court on the finding on each charge shall be given orally—

- (a) in reverse order of seniority; or
- (b) for a board with civilian members, in the order determined by the president of the board, save that he shall vote last.

### **Special finding**

74.—(1) For the purposes of these Rules a special finding is—

- (a) where the particulars proved or admitted at the trial differ from those alleged in the charge but are sufficient to support a finding of guilty of the like offence as that charged, a finding of guilty subject to exceptions or variations specified in the finding;
- (b) a finding in accordance with section 67 of the Act (power to convict of mitigated offence);
- (c) a finding in accordance with section 68 of the Act (power to convict of alternative offence).

(2) If it appears to the judge advocate that the difference is not so material as to have prejudiced the accused in his defence, the judge advocate may direct the court that a special finding under paragraph (1)(a) is open to them.

(3) In any case the judge advocate may direct the court that a special finding under paragraph (1) (b) or (c) is open to them.

(4) Before directing the court on a special finding, the judge advocate shall allow the prosecuting authority and the accused to address him on the matter.

(5) The court may not reach a special finding unless the judge advocate has directed them that such a finding is open to them.

### **Record of finding**

75.—(1) The finding of the court on a charge shall be recorded in writing and dated and signed by the president of the board.

(2) Each finding shall be announced separately by the president of the board.

(3) If the court reaches a finding of guilty or a special finding and the judge advocate is of the opinion that such a finding is contrary to the law relating to the case, he shall direct the court on the findings which are open to it and the court shall retire to reconsider its finding.

(4) If the judge advocate is satisfied that the findings are not incorrect in law, he shall countersign the record of the findings.

### **Offences taken into consideration**

76.—(1) Where the court has recorded a finding of guilty on any charge or a special finding, the accused may request the court to take into consideration any other offence committed by him of a similar nature to that of which he has been found guilty or in respect of which a special finding has been reached, and, upon such a request being made, the court may agree to take into consideration any such offence as to the judge advocate seems proper.

(2) A list of the offences which the accused admits having committed and which the court agrees to take into consideration shall be signed by the accused and attached to the record of proceedings.