
STATUTORY INSTRUMENTS

2007 No. 3444

The Courts-Martial (Royal Air Force) Rules 2007

PART 6

PRELIMINARY PROCEEDINGS

Preliminary hearing

36.—(1) The judge advocate may direct the court administration officer to list a hearing for the purpose of arraigning the accused, giving directions, orders and rulings in preparation for trial by court-martial—

- (a) of his own motion; or
- (b) on the application of the prosecuting authority or accused,

and such a hearing shall be referred to in these Rules as a preliminary hearing.

(2) For the purposes of this rule, a hearing is a preliminary hearing if it takes place before the commencement of the trial.

(3) An application for a preliminary hearing shall—

- (a) be made to the court administration officer in the form set out in Schedule 2 to these Rules; and
- (b) specify the reason for which it is made.

(4) Subject to rule 38, the applicant shall serve notice of the application in writing on every other party to the proceedings and the court administration officer.

(5) Before directing the court administration officer to list a preliminary hearing, the judge advocate shall afford each party to the proceedings the opportunity of making written representations to him.

(6) Paragraph (5) shall not oblige the judge advocate to afford any party the opportunity of making representations where it appears to him that it would be impracticable to do so, or would cause unnecessary delay, or where the application is made in accordance with rule 38.

(7) On receipt of a direction from the judge advocate under paragraph (1), the court administration officer shall—

- (a) appoint the date, time and place at which the preliminary hearing will take place;
 - (b) issue a notice in writing of the date, time and place appointed;
 - (c) list in the notice such of the matters contained in Schedule 3 to these Rules to be addressed at the hearing as the judge advocate may request;
 - (d) subject to rule 38, serve the notice on the parties to the proceedings; and
 - (e) arrange for the attendance at the hearing of a court recorder and, if the judge advocate or any party so requests, an interpreter.
- (8) If in advance of the hearing the judge advocate so directs, the prosecuting authority shall—
- (a) prepare an outline of the prosecution case; and

- (b) serve a copy of that outline on the accused and the judge advocate.

Preliminary hearing in open court

37.—(1) A preliminary hearing not made under rule 38 shall, unless the judge advocate directs otherwise, take place before the judge advocate in open court.

- (2) A preliminary hearing shall be a hearing before the judge advocate sitting alone.

Preliminary hearing without notice to the accused

38.—(1) Where in the public interest it is desirable to seek a direction from the judge advocate without giving notice to the accused, the prosecuting authority may apply for a preliminary hearing in accordance with this rule.

(2) Where the prosecuting authority applies for a preliminary hearing under this rule, the judge advocate shall determine whether in the interests of justice such a hearing is necessary.

(3) Where the judge advocate grants the prosecuting authority's application under this rule, he shall direct that the preliminary hearing shall proceed without notice to the accused and without the participation of the accused.

- (4) A preliminary hearing under this rule shall be before the judge advocate in chambers.

Challenges and oaths at a preliminary hearing

39.—(1) At the commencement of the preliminary hearing (not made under rule 38) the accused shall be entitled to object to the judge advocate and any interpreter.

(2) At the commencement of the preliminary hearing the judge advocate, or any other member of the court staff on his behalf, shall administer an oath to any interpreter.

Substance of a preliminary hearing

40.—(1) The parties to the proceedings shall address the judge advocate at the preliminary hearing on such of the matters contained in paragraph (4) as are indicated in the notice listing the hearing.

(2) Paragraph (1) is without prejudice to the right of the judge advocate or any party to the proceedings to raise at the preliminary hearing any other matter.

(3) The judge advocate may at a preliminary hearing make such directions as appear to him to be necessary to secure the proper and efficient management of the case.

- (4) At a preliminary hearing the judge advocate may make an order or ruling on—

- (a) such of the matters contained in Schedule 3 to these Rules as are indicated in the notice listing the hearing;
- (b) any question as to the admissibility of evidence;
- (c) any other question of law, practice or procedure relating to the case;
- (d) subject to rule 42, any question as to severance or joinder of charges.

- (5) The judge advocate may adjourn a preliminary hearing from time to time.

(6) An order or ruling made under this rule shall have effect throughout the proceedings unless it appears to the judge advocate on application made to him at any stage during the proceedings that the interests of justice require him to vary or discharge it.

(7) The court administration officer shall send a copy of the record of the preliminary hearing to the judge advocate.