
STATUTORY INSTRUMENTS

1997 No. 170

The Courts-Martial (Royal Navy) Rules 1997

PART V

PROCEEDINGS AT COURT-MARTIAL

Pre-trial hearing

25.—(1) The judge advocate may request the court administration officer to order a hearing to take place at the court-martial before the commencement of the trial of an accused—

- (a) of his own motion; or
- (b) on the application of the prosecutor or accused for such a hearing;

and such a hearing shall in these Rules be referred to as a pre-trial hearing.

(2) An application for a pre-trial hearing shall—

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

(3) An applicant shall serve notice in writing of the application with a time estimate of the length of the pre-trial hearing on every other party to the proceedings and the court administration officer.

(4) Before requesting the court administration officer to order a pre-trial hearing, the judge advocate shall afford each party to the proceedings the opportunity of making written representations to him.

(5) Paragraph (4) above 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.

(6) On receipt of a request from the judge advocate under paragraph (1) above, the court administration officer shall—

- (a) issue an order assembling the court-martial; or
- (b) if the order assembling that court-martial has already been issued, amend that order;

so that the order shall specify—

- (i) the date and time at which the pre-trial hearing before the judge advocate shall take place; and
- (ii) the date and time at which the members of the court other than the judge advocate shall assemble for the trial.

(7) Nothing in this rule shall prevent the judge advocate from ordering a pre-trial hearing after the full court has assembled.

Challenges and oaths at a pre-trial hearing

26.—(1) Where a pre-trial hearing takes place, rules 31 and 33 below shall be complied with so far as is necessary at the beginning of the pre-trial hearing, except that—

- (a) the accused may not state his objection to any member of the court other than the judge advocate; and
 - (b) the judge advocate shall not administer an oath or affirmation to any member of the court; until after the full court has assembled.
- (2) Where paragraph (1) above applies, the order of events set out in rules 31 and 33 below in respect of court members not present at the pre-trial hearing shall be modified accordingly.

Substance of a pre-trial hearing

- 27.**—(1) Without prejudice to the right of any party to the proceedings to raise any other challenge, objection, plea or application, application may be made at a pre-trial hearing to—
- (a) challenge the jurisdiction of the court;
 - (b) object to a charge on the grounds that it is not correct in law;
 - (c) plead that the court is debarred from trying him;
 - (d) apply for severance of the charges.
- (2) At a pre-trial hearing the judge advocate may make an order or ruling as to—
- (a) any question as to the admissibility of evidence;
 - (b) any other question of law, practice or procedure relating to the case.
- (3) An order or ruling made under this rule shall have effect until the conclusion of the trial unless it appears to the judge advocate on application made to him at any stage during the proceedings that in the interests of justice it should be varied or discharged.
- (4) If the judge advocate allows any application such that there is no charge remaining to which the accused can be required to plead, he shall order the court administration officer to dissolve the court.

President and members

- 28.**—(1) The president shall be responsible for conducting the trial in a manner befitting a court of justice and in accordance with the traditions of the Royal Navy.
- (2) Members of the court, other than the judge advocate, shall sit in order of seniority.
- (3) A member shall sit in the substantive rank he holds in Her Majesty's naval forces notwithstanding that he may have been appointed to a ship in a superior rank, save that a Commodore shall sit as a Commodore and rank above all Captains and sit with other Commodores according to their seniority as Captains.
- (4) If on full pay, an officer on the Retired List or Emergency List of the Royal Navy shall sit in the order in which he takes rank and command, but if he holds acting rank he shall sit in the order in which he would have taken rank and command if he had not been granted acting rank.

The judge advocate

- 29.**—(1) The judge advocate shall be responsible for ensuring that the trial is conducted in accordance with law.
- (2) The judge advocate has a duty to ensure that the accused, particularly if he is not represented, does not suffer any disadvantage in consequence of his position as such or otherwise.
- (3) The judge advocate shall be responsible for ensuring that a proper record of the proceedings is made.

Judge advocate sitting alone

30.—(1) Where—

- (a) the accused makes a submission of no case to answer; or
- (b) for any reason the judge advocate is of the opinion that he should rule on a question in the absence of the other members of the court;

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

(2) Subject to paragraph (5) below, while the other members of the court are absent the judge advocate shall exercise all the powers and duties of the court, including the president.

(3) After the other members of the court have withdrawn from the court, the judge advocate shall hear the arguments and evidence relevant to the point at issue and shall give his ruling and his reasons for it.

(4) After the judge advocate has given his ruling, the other members of the court shall return to the court and the judge advocate may, if it seems appropriate to him, announce his ruling to them.

(5) If, while the judge advocate is sitting alone under this rule or at a pre-trial hearing, a person subject to the Act commits an offence under section 38(1)(1) of the Act, the judge advocate may report the occurrence to—

- (a) the president; or
- (b) if the offence is committed during a pre-trial hearing, the commanding officer of the offender.

Challenges by the accused

31.—(1) This rule applies subject to rule 26 above.

(2) On assembly of the full court—

- (a) the order assembling the court-martial (including the name of any officer therein);
- (b) the name of the judge-advocate; and
- (c) the names of the clerk of the court and any interpreter

shall be read to the accused.

(3) The accused may state the name of any person to whom he objects.

(4) If more than one person is objected to, the objection to each shall be disposed of separately in the following order—

- (a) the judge advocate;
- (b) the president;
- (c) the other members of the court in reverse order of seniority;
- (d) any spare member;
- (e) the clerk of the court;
- (f) any interpreter.

(5) The accused may make a statement and call any person to make a statement in support of his objection.

(6) A person other than the judge advocate 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.

(1) Section 38 was amended by the Armed Forces Act 1971 (c. 33), section 23(3) and the Criminal Justice Act 1982 (c. 48), section 58 and Schedule 8.

(7) Each objection shall be considered by the judge advocate and his determination announced in open court.

(8) If an objection to the president is allowed, the judge advocate shall announce that the court is dissolved.

(9) If an objection to the clerk of the court or interpreter is allowed, the judge advocate shall adjourn proceedings until the court administration officer has appointed a replacement.

(10) Where a court is assembled to try two or more accused separately and one accused objects to the president or to any other member of the court, the judge advocate may, if he thinks fit, adjourn the trial of that accused and proceed with the trial of the other accused only.

Oaths and affirmations

32. An oath or affirmation shall be administered in the form and manner set out in Schedule 4 to these Rules.

Administration of oaths and affirmations

33.—(1) This rule applies subject to rule 26 above.

(2) After the accused has been given the opportunity to challenge the members and officials of the court, oaths or affirmations shall be taken in the presence of the accused.

(3) The judge advocate shall take his oath or affirmation.

(4) The judge advocate shall administer an oath or affirmation to—

- (a) the president;
- (b) each other member of the court;
- (c) the clerk of the court;
- (d) any interpreter;
- (e) any officer or other person in attendance for instruction.

Commencement of the trial

34.—(1) For the purposes of the Act and 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 to which the accused can be required to plead, he shall dissolve the court.

Severance

35. Where—

- (a) an accused is charged with more than one offence; or
- (b) two or more accused are charged in the same charge sheet;

and the judge advocate rules that the fair trial of an accused may be prejudiced if the charges are not severed or that for any other reason it is desirable that the charges are severed, he may—

- (i) order the court to try only one or more charges;
- (ii) order the court to try only one or more accused;
- (iii) leave any charge or any accused to be tried by a new court.

Plea to the charge

36.—(1) The accused shall be arraigned by the judge advocate after the commencement of the trial.

(2) The accused shall be required to plead separately to each charge on which he is arraigned.

(3) Where the court is empowered to make a special finding, the accused may plead guilty to the offence subject to the matters as would merit the special finding.

Guilty plea

37.—(1) If an accused pleads guilty to a charge, the judge advocate shall, if it appears necessary to him and before the court accepts the plea, satisfy himself that the accused understands—

- (a) the nature of the charge;
- (b) the general effect of the plea; and
- (c) the difference in procedure following pleas of guilty and not guilty.

(2) The court shall not accept a plea of guilty if—

- (a) the court is not satisfied that the accused understands the nature of the charge or the effect of his plea;
- (b) the judge advocate, having regard to all the circumstances, considers that the court should not accept the plea;
- (c) the accused is liable, if convicted, to a sentence of death.

(3) Where—

- (a) a plea of guilty is not accepted by the court; or
- (b) the accused does not plead to the charge or does not plead to it intelligibly,

the court shall enter a plea of not guilty.

Alternative charges

38.—(1) Where an accused pleads guilty to the more serious of two or more alternative charges, the court, if it accepts the plea, shall record a finding of guilty in respect of that charge and shall not proceed with the lesser alternative charge or charges.

(2) Where an accused pleads guilty to the lesser of two or more alternative charges, 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 not proceed with the more serious alternative charge or charges.

Additional charges during trial

39.—(1) If after the commencement of the trial the prosecutor intends to seek the leave of the court to prefer an additional charge, he shall unless the accused waives the requirement serve notice in writing of such intention on the accused before the application is made.

(2) Where notice is served on the accused in accordance with paragraph (1) above, he may apply for an adjournment of the trial.

Changes to the charge sheet during trial

40.—(1) If after the commencement of the trial the prosecutor intends to—

- (a) amend, or substitute another charge or charges for, a charge;
- (b) discontinue proceedings on a charge;
- (c) prefer an additional charge;

the prosecutor shall seek the leave of the court.

(2) Where the court gives leave to discontinue proceedings on a charge, the court may close to consider whether to give the direction provided for in section 52I(13) of the Act.

(3) Any direction referred to in paragraph (2) above shall be given in open court.

Changes to the charge sheet by the court

41.—(1) If after the commencement of the trial it appears that there is in the charge sheet—

- (a) a mistake in the name or description of the accused;
- (b) a mistake which is attributable to a clerical error or omission;

the court may amend the charge sheet so as to correct the mistake.

(2) If at any time during a trial prior to deliberation on the finding on a charge it appears that, with due regard to the fairness to the accused, it is desirable in the interests of justice to amend that charge, the court may do so.

Procedure after guilty plea

42.—(1) This rule applies where—

- (a) the court has accepted only a plea or pleas of guilty; or
- (b) the court has accepted a plea or pleas of guilty and the prosecutor does not proceed to the trial of any charge to which an accused has pleaded not guilty.

(2) This rule applies whether the charge sheet is in respect of one or more than one accused.

(3) Before the court records a finding of guilty, the prosecutor shall address the court on the prosecution case.

(4) If the judge advocate is satisfied that the court may properly record a finding of guilty, the court shall record such a finding.

Mixed pleas

43.—(1) This rule applies where—

- (a) the court has accepted pleas of guilty and not guilty on one charge sheet; and
- (b) the prosecutor proceeds to the trial of any charge to which an accused has pleaded not guilty.

(2) This rule applies whether the charge sheet is in respect of one or more than one accused.

(3) Unless the judge advocate directs otherwise, the trial of any charge to which an accused has pleaded not guilty shall proceed in accordance with these Rules before the court considers any guilty plea.

(4) The prosecutor, so far as is possible, shall not—

- (a) address the court on any fact, or
- (b) lead evidence,

relating to a charge to which any accused has pleaded guilty, except where that fact or evidence relates also to a charge to which any accused has pleaded not guilty.

(5) When summing up in the trial of any charge to which an accused has pleaded not guilty, the judge advocate shall warn the court to disregard any charge to which any accused has pleaded guilty.

(6) After the court has announced its finding on the charge or charges to which the plea was not guilty, the prosecutor shall address the court on the prosecution case in respect of any charge to which an accused has pleaded guilty.

(7) If the judge advocate is satisfied that the court may properly record a finding of guilty in respect of any charge to which an accused has pleaded guilty, the court shall record such a finding.

Dispute on facts after guilty plea

44.—(1) This rule applies where the accused has pleaded guilty to any charge, but the prosecutor does not accept the factual basis on which that plea is made.

(2) Before the court records a finding of guilty in respect of that charge, any issue of fact may be tried and the prosecutor and the accused may call any witness to give evidence about the facts of the case.

(3) The court shall sit in closed court while deliberating on its finding on the issue of fact.

(4) The finding of the court on the issue of fact shall be determined by a majority of the votes of the members of the court and announced in open court by the president.

(5) The judge advocate shall not be present while the other members of the court are deliberating on the issue of fact and shall not be entitled to vote on the finding.

Change of plea

45.—(1) At any time before the court closes to deliberate on its finding on a charge, an accused who has pleaded not guilty to the charge may withdraw his plea and substitute a plea of guilty.

(2) At any time before the court closes to deliberate on its sentence on a charge, an accused who has pleaded guilty to the charge may withdraw his plea and substitute a plea of not guilty.

(3) Where an accused changes his plea, the court shall proceed so far as is necessary as if the initial plea to that charge were the plea substituted.

Procedure after not guilty plea

46.—(1) The prosecutor shall make an opening address based on the statement of the prosecution case in the prosecution papers setting out the facts supporting the charge which he intends to establish.

(2) The witnesses for the prosecution shall then be called to give their evidence.

Additional evidence during trial

47.—(1) If after the commencement of the trial the prosecutor 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 the accused in accordance with paragraph (1) above, or where evidence is adduced without such notice being given, he may apply for an adjournment of the trial.

Expert evidence

48.—(1) Expert evidence shall not be adduced at 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) above shall be in writing unless every other party consents to it being made orally.

Exhibits

49.—(1) Any document or thing admitted in evidence shall be made an exhibit and marked sequentially with either a number or a letter.

(2) The clerk of the court shall maintain a list of exhibits.

(3) Each exhibit, or a copy certified by the clerk of the court as a true copy, 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, or a copy, 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.

Presence of witnesses

50.—(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 for the duration of the discussion.

(3) The judge advocate may direct any expert or character witness present in court to withdraw if the judge advocate for any reason considers his presence to be undesirable.

Evidence through television link

51.—(1) Any application by the prosecutor 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 link shall be made as soon as is practicable after the commencement of the trial.

(2) An application may not be made under paragraph (1) above 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, 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.

(2) 1988 c. 33; section 32(1)–(3) applies to proceedings before courts-martial by virtue of the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 1996 (S.I.1996/2592) subject to the modifications specified therein.

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

Video recordings of testimony from child witnesses

52.—(1) Any application by the prosecutor or an accused for leave under section 32A of the Criminal Justice Act 1988⁽³⁾ for evidence to be given by a witness by means of a video recording shall be made as soon as is practicable after the commencement of the trial.

(2) An application may not be made under paragraph (1) above 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, together with a copy of the video recording to which the application relates, 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, the date of birth of the witness;
- (d) the date on which the video recording was made;
- (e) that in the opinion of the applicant the witness is willing and able to attend the court-martial for cross-examination; and
- (f) the circumstances in which the video recording was made.

Examination of witnesses

53.—(1) A witness may be—

- (a) examined by the party which called him;
- (b) cross-examined by any other party to the proceedings; and
- (c) on the conclusion of any cross-examination, re-examined by the party which called him on matters arising out of the cross-examination.

(2) The person examining a witness shall question the witness orally and unless an objection is made the witness shall reply immediately.

(3) An objection may be made by the witness, the judge advocate, the prosecutor or the accused whereupon the witness shall not reply until the objection has been disposed of.

(4) 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.

Questioning by the court

54.—(1) The court may question any witness.

(2) After the witness has replied, the parties to the proceedings may ask the witness such questions arising from his answer as may be allowed by the judge advocate.

(3) Section 32A was inserted by the Criminal Justice Act 1991 (c. 53), section 54. Section 32A applies to proceedings before courts-martial by virtue of the Criminal Justice Act 1988 (Application to Service Courts) (Evidence) Order 1996 subject to the modifications specified therein.

Recall of witnesses

55.—(1) If in the opinion of the judge advocate it is in the interests of justice to do so, the court may, at any time before the judge advocate begins to sum up—

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

(2) If a witness is called or recalled under this rule, the parties to the proceedings may ask the witness such questions as may be allowed by the judge advocate.

Submission of no case to answer

56.—(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 prima facie case for him to answer and that he should not be called upon to make his defence to that charge.

(2) If the submission is allowed, the judge advocate shall direct the court to find the accused not guilty of the charge to which it relates and such finding shall be announced in open court.

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

Finding of not guilty before the conclusion of the defence

57. 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 prosecutor has been given an opportunity to address the court on the question, and such finding shall be announced in open court.

The case for the defence

58.—(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 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 prosecutor and questioned by the court; and
- (d) that he may call witnesses on his behalf.

(2) The judge advocate shall ask the accused—

- (a) whether he intends to give evidence in his defence;
- (b) whether he intends to call any witnesses on his behalf; and
- (c) if he intends to call witnesses, whether they are witnesses to fact or to character.

(3) 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

59. 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

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

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

Closing addresses

61.—(1) Subject to paragraph (4) below, 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 prosecutor.

(3) Where two or more accused are represented by the same accused's friend, 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 prosecutor shall not make a closing address.

Summing up

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

Special finding

63.—(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) above 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) above is open to them.

(4) Before directing the court on a special finding, the judge advocate shall allow the prosecutor 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.

Deliberation on finding

64.—(1) After the summing up, the judge advocate shall withdraw and the court shall close to deliberate on its finding on each charge.

(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.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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

(4) The vote of each member of the court on the finding on each charge shall be given orally in reverse order of seniority.

Record of finding

65.—(1) Notwithstanding any minority vote, the finding of the court on each charge shall be recorded in writing, signed by each member of the court except the judge advocate and transmitted to the judge advocate in open court.

(2) 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 them and the court shall retire to reconsider its finding.

(3) If the judge advocate is satisfied that the findings are not incorrect in law, he shall countersign the record of the findings and announce them in open court.