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STATUTORY INSTRUMENTS

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**1997 No. 171**

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

**PART III**

**GENERAL MATTERS**

**Conduct of the defence**

**15.**—(1) An accused who has been notified that he is to be tried by court-martial shall be afforded a proper opportunity for preparing his defence.

(2) A defending officer shall be appointed by the commanding officer of the accused to assist the accused to prepare and conduct his defence, unless the accused states in writing that he does not wish such an appointment to be made.

(3) The accused may appoint a legal adviser to act for him and any right or responsibility which accrues to the accused by virtue of these Rules (except pleading to a charge) may be exercised by the accused's legal adviser on his behalf.

(4) The accused shall inform the court administration officer of the name and address of his legal adviser as soon as is practicable after a legal adviser has been appointed.

(5) A legal adviser may represent an accused at a formal preliminary examination, at any preliminary proceedings and before a court-martial if he is—

- (a) a person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990<sup>(1)</sup>;
- (b) an advocate or a solicitor in Scotland;
- (c) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland; or
- (d) a person who has in any Commonwealth country rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.

**Convening the court**

**16.**—(1) On receipt of a copy of the prosecution papers, the court administration officer shall order a court-martial to convene to try the accused.

(2) Not less than 24 hours before the time appointed for the trial, a copy of the convening order shall be served on—

- (a) the accused; and
- (b) the officer members of the court, the Judge Advocate General (or his deputy) and the prosecuting authority.

(3) If the court administration officer amends or withdraws the order convening the court-martial, he shall serve a copy of the amended order or serve notice in writing as appropriate on—

- (a) the accused; and
- (b) the officer members of the court, the Judge Advocate General (or his deputy) and the prosecuting authority.

(4) The court administration officer may not withdraw the order convening a court-martial after the time appointed for the trial.

### **Ineligibility for membership of courts-martial**

17. An officer shall not be eligible to be a member of a court-martial for the trial of an accused if—

- (a) he serves under the command of—
  - (i) the higher authority who referred the case against the accused to the prosecuting authority;
  - (ii) the prosecuting authority; or
  - (iii) the court administration officer;
- (b) he—
  - (i) has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
  - (ii) is an advocate or a solicitor in Scotland;
  - (iii) is a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland;
  - (iv) has in any Commonwealth country rights and duties similar to those of a barrister or solicitor in England and Wales, and is subject to punishment or disability for breach of professional rules.

### **Appointment of court officials**

18. The court administration officer may appoint at any time a person or persons to act as—

- (a) court recorder;
- (b) interpreter,

at a court-martial or at any preliminary proceedings.

### **Delegation of the court administration officer's functions**

19. The court administration officer appointed by the Defence Council in accordance with section 84A of the Act may delegate any of his functions to persons appointed to act as court administration officers under his direction.

### **Additional evidence before trial**

20. If before the commencement of the trial the prosecutor wishes to adduce at trial any evidence additional to that contained in the prosecution papers, he shall serve a copy of the additional evidence (or details of its whereabouts) on the accused and the court administration officer.

### **Witness not called by the prosecutor**

- 21.**—(1) This rule applies where the prosecutor does not intend to call as a witness—
- (a) any person whose statement or record of evidence has been served on the accused as part of the evidence for the prosecution; or
  - (b) any person in respect of whose evidence he has served notice under rule 56 below.
- (2) Where this rule applies, unless the accused waives the requirement, the prosecutor shall—
- (a) serve notice in writing on the accused that he does not intend to call that person; or
  - (b) tender that person at trial for cross-examination by the accused.

### **Witnesses for the accused**

**22.**—(1) As soon as is practicable after the accused has been notified that he is to be tried by court-martial, the court administration officer shall notify the accused that any person whom he reasonably requires to give evidence at preliminary proceedings or the court-martial may be summoned on his behalf by the court administration officer.

(2) If the accused requests the court administration officer to summon a witness, the accused shall provide to the court administration officer sufficient information in sufficient time to enable a summons to be served.

(3) If in the opinion of the court administration officer it is not reasonable to summon to preliminary proceedings or a court-martial any witness requested by the accused, he shall inform the accused, the Judge Advocate General (or his deputy) and the prosecutor in writing of his decision and the reason for it.

### **Witness summons**

- 23.**—(1) Where any person is required to give evidence at—
- (a) a formal preliminary examination;
  - (b) any preliminary proceedings;
  - (c) a court-martial;

the court administration officer may summon the witness by issuing a witness summons in the form set out in Schedule 2 to these Rules.

(2) Where any person is required to give evidence at a court-martial, the judge advocate may, after the commencement of the trial, issue a witness summons.

- (3) A witness summons shall be served on the witness—
- (a) by delivering it to him personally;
  - (b) by leaving it for him with a person at the witness's usual place of abode;
  - (c) by post in a letter addressed to him at his last known or usual place of abode; or
  - (d) where the witness is subject to air force law, military law or the Naval Discipline Act 1957(2), through his commanding officer.

(4) Where any person is served with a witness summons in accordance with this rule, there shall be paid or tendered to him at that time any expenses which by regulations made by the Defence Council are payable to a witness in respect of his attendance.

- (5) For the purposes of paragraph (4) above—

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- (a) the tender of a warrant or voucher entitling the person to travel free of charge shall constitute tender of his expenses in respect of any travelling required; and
- (b) the tender of a written undertaking by the court administration officer or the president of the court-martial to defray any other expenses payable under the regulations shall constitute tender in respect of those expenses.

**Oaths and affirmations**

**24.** Any oath or affirmation shall be administered in the form and manner set out in Schedule 3 to these Rules.