
STATUTORY INSTRUMENTS

1997 No. 172

The Standing Civilian Courts Order 1997

PART II

PROSECUTION OF OFFENCES

Referring a case to the prosecuting authority

5. Where the higher authority refers a case in respect of an accused to the prosecuting authority, he shall forward to the prosecuting authority—

- (a) a copy of any report concerning the case prepared by the service police or other investigator;
- (b) any allegation reported to the commanding officer of the accused in the form of a charge under section 76(1) of the 1955 Act and details of any substitution or amendment of that charge under section 76(3) of the 1955 Act;
- (c) a list of any potential witnesses;
- (d) any written statements or written record of evidence of the potential witnesses;
- (e) any statements made by the accused including records or transcripts of interviews conducted under caution;
- (f) a list of any exhibits;
- (g) any other information in the possession of the higher authority which may be material to the prosecutor's consideration of the institution of proceedings.

Conduct of the prosecution

6.—(1) If the prosecuting authority considers that Standing Civilian Court proceedings should be instituted, he shall—

- (a) determine any charge to be preferred;
- (b) prefer any charge so determined by him; and
- (c) direct that any such charge is to be tried by a Standing Civilian Court.

(2) The prosecuting authority shall have the conduct of any Standing Civilian Court proceedings against the accused.

Charge sheet

7.—(1) A charge sheet shall state—

- (a) the name and date of birth of the accused;
 - (b) particulars of how the accused is triable by a Standing Civilian Court; and
 - (c) any charge preferred against the accused.
- (2) A charge sheet shall be signed and dated by the prosecutor.

Charges and joinder

8. The rules contained in Schedule 1 to this Order shall be observed in proceedings before Standing Civilian Courts.

Notifying the court administration officer

9.—(1) Where the prosecutor has preferred a charge against an accused to be tried by a Standing Civilian Court, the prosecutor shall send to the court administration officer the prosecution papers.

(2) In this Order, “the prosecution papers” means—

- (a) a copy of the charge sheet;
- (b) a list of any witnesses whom the prosecutor 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 prosecutor proposes to put in evidence and copies of those exhibits or details of their whereabouts; and
- (e) a list of all unused material.

Summoning the accused

10. On receipt of the prosecution papers, the court administration officer shall—

- (a) after consultation with the magistrate, or the Judge Advocate General (or his deputy), appoint the date, time and place for the trial;
- (b) specify any members of the court or assessors for the trial, if any members or assessors have not previously been specified for a succession of trials;
- (c) serve on the accused—
 - (i) a summons to the accused in the form set out in Schedule 2 to this Order; and
 - (ii) the prosecution papers.

Informing a parent or guardian of the accused

11.—(1) This article applies where—

- (a) an accused is under 17 years of age, or
- (b) the offence with which the accused is charged is alleged to have been committed during a period of parental recognisance.

(2) The court administration officer shall serve on a parent or guardian of the accused who is a service parent or guardian—

- (a) a summons to a parent or guardian in the form set out in Schedule 2 to this Order;
- (b) a copy of the summons to the accused; and
- (c) a copy of the prosecution papers.

(3) Where the prosecutor or the court administration officer is required under this Order to serve any document on the accused, he shall at the same time serve a copy of that document on the parent or guardian of the accused on whom a summons has been served under paragraph (2) above.

Notifying the magistrate and commanding officer

12. The court administration officer shall send to the magistrate and the commanding officer of the accused—

- (a) a copy of the charge sheet;

- (b) a copy of the summons to the accused; and
- (c) a copy of any summons to a parent or guardian.

Changes to the charge sheet before trial

13.—(1) Without prejudice to any other power of his in relation to the conduct of the proceedings, at any time before the opening of proceedings in respect of a charge, the prosecutor may—

- (a) amend, or substitute another charge or charges for, that charge;
- (b) discontinue proceedings on that charge;
- (c) prefer an additional charge against the accused and direct that the additional charge shall be tried at the same time as the original charge;
- (d) determine that a charge originally preferred for trial by a Standing Civilian Court be tried by court-martial.

(2) If the prosecutor exercises any of his powers under paragraph (1) above, he shall serve notice in writing, together with any papers which are required to be added to the prosecution papers, on the accused and the court administration officer.

(3) If the prosecutor exercises his power under paragraph (1)(d) above, he shall proceed with the charge in accordance with courts-martial rules.

(4) Where the court administration officer receives notice in accordance with paragraph (2) above, he shall send a copy of the notice to the magistrate.

Change in date, time or place of trial

14.—(1) At any time before the opening of proceedings, the court administration officer may, after he has consulted the magistrate, or the Judge Advocate General (or his deputy), vary the date, time or place appointed for the trial.

(2) The court administration officer shall serve notice in writing of any change made under paragraph (1) above on the accused, the prosecutor and the magistrate.

Objection before trial to member or assessor

15.—(1) An accused to whom a summons has been sent shall be entitled to object before the trial to any member of the court or assessor specified for his trial.

(2) An objection under this article shall be made to the court administration officer in writing, stating the grounds for objection, not later than 48 hours before the date appointed for his trial.

(3) The court administration officer shall immediately on receipt of any such objection consider it and notify the accused of his decision in respect of the objection.

Election of trial by court-martial

16.—(1) An accused to whom a summons has been sent may in accordance with this article elect court-martial trial—

- (a) at any time before the date appointed for his trial, by notifying the court administration officer in writing; or
- (b) at trial in accordance with article 37 below.

(2) Where a charge sheet contains two or more charges against an accused, he may elect only in respect of both or all such charges.

(3) Where there is more than one charge sheet relating to an accused, he may elect in respect of any one or more of them.

Election where more than one accused

17. Where two or more accused are charged in the same charge sheet and one of the accused elects court-martial trial in respect of that charge sheet, each accused shall be treated for the purposes of this Order as if he had so elected.

Steps to be taken where accused elects

18.—(1) Where an election is made under article 16(1)(a) above, the court administration officer shall notify the magistrate and the prosecutor.

(2) Where an election is made under article 16(1)(a) above, and is an election to which article 17 above applies, the court administration officer shall give notice in writing to any accused who as a result of the election is to be treated as if he had elected court-martial trial.

(3) Where an accused elects court-martial trial and his election is not subsequently withdrawn, the prosecutor shall proceed in accordance with courts-martial rules.

Withdrawal of election

19.—(1) An accused who elects court-martial trial may not withdraw his election except within 28 days of its being made and in accordance with this article.

(2) Where an accused seeks to withdraw his election, he shall—

- (a) make an application in writing for leave to withdraw his election to the magistrate; and
- (b) serve a copy of the application on the prosecutor.

(3) Before making his decision on the accused's application, the magistrate shall afford the prosecutor the opportunity of making written representations to him.

(4) The magistrate shall, unless he considers that the accused should be afforded an opportunity to appear before him, issue his decision in writing.

(5) If an accused has elected court-martial trial and has with leave withdrawn his election, he may not make a further election for court-martial trial in respect of those proceedings.