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STATUTORY INSTRUMENTS

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**1997 No. 172**

**The Standing Civilian Courts Order 1997**

**PART III**

**GENERAL MATTERS**

**Conduct of the defence**

**20.**—(1) An accused who has been notified that he is to be tried by a Standing Civilian Court shall be afforded a proper opportunity for preparing his defence.

(2) An appropriate person shall be appointed by the commanding officer 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.

**Representation of the accused**

**21.**—(1) The accused may appoint a legal adviser to act for him.

(2) Any right or responsibility which accrues to the accused by virtue of this Order may be exercised by his legal adviser on his behalf, except—

- (a) electing to be tried by court-martial or stating that he does not wish so to elect, and
- (b) pleading to the charge.

(3) 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.

(4) A legal adviser may represent an accused before a Standing Civilian Court 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(1);
- (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 country outside the United Kingdom 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.

(5) Where an accused under 17 years of age is not represented by a legal adviser, the court may allow any parent or guardian of his who is present to represent him in such manner and to such extent as the court thinks fit.

**Appointment of court officials**

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

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(1) 1990 c. 41.

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

at a trial by Standing Civilian Court.

#### **Additional evidence before trial**

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

#### **Witnesses not called by the prosecutor**

- 24.**—(1) This article 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) a person in respect of whose evidence he has served notice under article 56.
- (2) Where this article applies, the prosecutor shall, unless the accused waives the requirement—
- (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**

**25.**—(1) As soon as is practicable after the accused has been summoned to appear before a Standing Civilian Court, the court administration officer shall notify the accused that any person whom he reasonably requires to give evidence at the trial may be summoned on his behalf by the court administration officer.

(2) If the accused requires 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 trial any witness requested by the accused, he shall inform the accused, the magistrate and the prosecutor in writing of his decision and the reason for it.

#### **Witness summons**

**26.**—(1) Where any person is required to give evidence before a Standing Civilian Court the court administration officer may summon the witness by issuing a witness summons in the form set out in Schedule 2 to this Order.

(2) Where any person is required to give evidence before a Standing Civilian Court the magistrate may, after the opening of proceedings, 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) for a witness who is subject to military law, air force law or the Naval Discipline Act 1957, through his commanding officer.

(4) Where any person is served with a summons in accordance with this article, 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 at a trial.

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

- (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 to defray any other expenses payable under the regulations shall constitute tender in respect of those expenses.

### **The magistrate**

27. The magistrate shall conduct the proceedings in accordance with the law of England and Wales.

### **Functions of assessors**

28. An assessor may advise the magistrate on any matter (other than a question of law) arising at any stage during the proceedings, and shall for this purpose, and this purpose alone, remain with the magistrate when he deliberates on any matter, including sentence.

### **Swearing in of magistrates, members and assessors on appointment**

29.—(1) A person appointed a magistrate under section 6(4) of the 1976 Act shall take an oath upon his appointment before the Lord Chancellor or a person authorised by him in that behalf.

(2) A person appointed a member of a panel under subsection (6) or (8) of section 6 of the 1976 Act shall take an oath upon his appointment before the magistrate or the Judge Advocate General.

### **Form of oath**

30.—(1) An oath which is required to be administered under the 1955 Act or this Order shall be administered in the appropriate form and manner set out in Schedule 3 to this Order.

(2) Every oath which under this Order is to be administered in court shall be administered by the magistrate or by any person whom he authorises.

(3) The oath to be taken by a person over 14 but under 17 years of age, or by any person at a trial where no accused is over 17 years of age, shall be in the appropriate form set out in Schedule 3 to this Order.

(4) Where a person is permitted by section 102 of the 1955 Act, as applied in relation to Standing Civilian Courts by article 91 and Schedule 4 below, to make a solemn affirmation instead of swearing an oath, the affirmation shall be in the appropriate form set out in Schedule 3 to this Order.

### **Bankers' Books Evidence Act 1879**

31.—(1) The power to make an order conferred by section 7 of the Bankers' Books Evidence Act 1879(2) may be exercised for the purposes of proceedings before Standing Civilian Courts by the magistrate.

(2) The order shall be in the form set out in Schedule 2 to this Order.